

service. Regulation of CMRS roaming rates therefore is unnecessary.

II. RESALE OBLIGATIONS

A. Regulatory Parity Requires That Existing Cellular Resale Obligations Be Extended to All CMRS Providers.

New Par concurs with the Commission's tentative conclusion to extend the existing cellular resale obligation to all CMRS providers and to impose unrestricted and non-discriminatory resale obligations as a condition of all CMRS licenses.⁴¹ Imposition of uniform resale obligations on all cellular-like CMRS providers will further promote the congressional mandate that similar mobile services should be subject to similar regulatory treatment.⁴²

New Par further concurs with the Commission's tentative conclusion that a time limitation should be placed on a CMRS provider's obligation to permit another facilities-based CMRS provider to resell its services.⁴³ Specifically, resale obligations to other facilities-

⁴¹ See id. ¶ 83.

⁴² See CMRS Second Report and Order, 9 FCC Rcd at 1418 (citing H.R. Rep. No. 111, 103d Cong., 1st Sess. 259 (1993)).

⁴³ See Second NPRM ¶ 90.

based CMRS providers should sunset one year following the Commission grant of a license to such CMRS provider.⁴⁴ This one-year window strikes an equitable balance between the public's interest in encouraging facilities-based competition and new entrants' interest in resale. Unrestricted resale provides a disincentive to build a system expeditiously.⁴⁵ Limiting the resale right of facilities-based competitors to one year following license grant will facilitate competitor entry during the initial construction period while encouraging facilities-based CMRS competitors to build out their own systems.

In response to the Commission's request for comment on number transferability,⁴⁶ New Par maintains that number transferability in the wireless context should not be mandated as part of the Commission's CMRS resale policy. Number transferability is a technically complex issue that will be driven, at least initially, by the technical feasibility of landline number portability.

⁴⁴ See New Par Reply Comments at 8.

⁴⁵ See Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, Report and Order, 7 FCC Rcd 4006, 4007-08, aff'd sub nom. Cellnet Communications v. FCC, 965 F.2d 1106 (D.C. Cir. 1992) [hereinafter Cellular Resale Policies].

⁴⁶ See Second NPRM ¶ 94.

Specifically, technical limitations currently prevent the identification of the customer and/or carrier associated with a particular number in a number portability scheme.⁴⁷ New Par thus submits that number portability would be more properly addressed in a general rulemaking proceeding dedicated solely to that issue.

B. The Commission Should Refrain from Imposing
 Upon Cellular Licensees the Obligation To
 Offer Reseller Switch Interconnection.

For the reasons articulated in Sections I.A. and B. above, New Par concurs with the Commission's tentative conclusion to refrain from imposing a reseller switch interconnection obligation on facilities-based cellular carriers.⁴⁸ Neither Section 201(a) nor Section 332(c)(1)(B) grants resellers a right to physical interconnection with facilities-based cellular networks. Moreover, even if the Commission were to impose mandatory interconnection obligations among facilities-based CMRS networks, reseller-switch interconnection does not necessarily follow.

⁴⁷ For a discussion of the myriad of issues associated with number portability, see generally Provision of Access for 800 Service, MM Docket No. 86-10.

⁴⁸ See Second NPRM ¶ 95.

Unlike a facilities-based CMRS provider, a reseller has no network that needs connection to the public switched telephone network for call completion. In lieu of constructing their own network, resellers "lease" the services and functions of a facilities-based carrier's network and offer those services to the public under their own name. There is no basis or precedent, however, to enable a reseller to require a CMRS carrier to unbundle its system and lease only those portions the reseller desires.⁴⁹

As an outgrowth of Sections 201(b) and 202(a) of the Act, the resale industry enjoys the right to resale the services of a facilities-based cellular carrier without unjust or unreasonable restrictions.⁵⁰ Sections 201(a) and 332(c)(1)(B) further provide that carriers and CMRS providers may request the Commission to

⁴⁹ The Commission has specifically recognized that resellers may not succeed and may not be profitable. See Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, Notice of Proposed Rule Making and Order, 6 FCC Rcd 1719, 1726 (1991); see also Cellular Communications Systems, 86 F.C.C.2d at 511. In ordering resale, the Commission never contemplated that resellers could pick and choose from among the services of a facilities-based carrier.

⁵⁰ See Cellular Resale Policies, 7 FCC Rcd at 4006.

order interconnection "to establish through routes."⁵¹ In their proposal for switched-based resale, however, resellers are not seeking to exercise either the rights under Section 201(a) or Section 201(b). Instead, resellers are asking the Commission for license to construct their own "networks." The resale industry's claim for unbundling, or "switch" interconnection, is nothing but a poorly veiled attempt to become a quasi facilities-based carrier without the investment or risks associated with designing and constructing their own wireless network. As resellers, they enjoy the right only to purchase a facilities-based provider's services on the same terms as other customers. In short, a reseller has all necessary connections through the facilities-based licensee whose service it resells. No "bottleneck" of any kind is present.

Finally, operational problems, inefficiencies, and added costs associated with switched-based resale far outweigh any possible public interest benefits. Even if

⁵¹ See MTS and WATS Market Structure (Phase I), 93 F.C.C.2d 241, 255 n.16 (recognizing that the origin of "through routes" in Section 201(a) was a corresponding provision of the Interstate Commerce Act relating to the connection of geographically distinct lines to facilitate the continuous carriage of commerce).

a reseller installs its own switch, a cellular or other CMRS carrier still must maintain duplicate customer databases in order to identify reseller customers, verify users, validate roaming, and forward calls to the reseller switch. This duplication of the switching functions of a CMRS carrier is highly inefficient and translates into increased costs to CMRS subscribers.

III. CONCLUSION

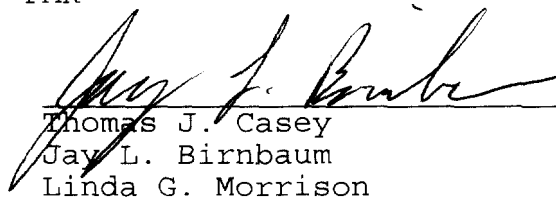
For the foregoing reasons, New Par recommends that the Commission refrain from imposing mandatory CMRS-to-CMRS interconnection obligations, including switched-based resale. Instead, the Commission should allow the competitive CMRS marketplace to dictate interconnection and roaming arrangements among CMRS providers. In addition, New Par supports the Commission's conclusion to extend resale obligations to all CMRS providers, but recommends that this obligation be limited to one year

following Commission grant of a license to facilities-
based CMRS providers.

Respectfully submitted,

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